

**MINUTES OF THE SUBCOMMITTEE OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-third Session
February 9, 2005**

The subcommittee of the Senate Committee on Commerce and Labor was called to order by Chair John Lee at 10:35 a.m. on Wednesday, February 9, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator John Lee, Chair
Senator Randolph J. Townsend
Senator Warren B. Hardy II

GUEST LEGISLATORS PRESENT:

Senator Valerie Wiener, Clark County Senatorial District No. 3

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Kevin Powers, Committee Counsel
Jane Tetherton, Committee Secretary
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Christina Dugan, Las Vegas Chamber of Commerce
William R. Uffelman, Nevada Bankers Association
Chris MacKenzie, American Express
Paul J. Enos, Retail Association of Nevada

CHAIR LEE:

We will open the hearing on Senate Bill (S.B.) 7.

Subcommittee of the Senate Committee on Commerce and Labor
February 9, 2005
Page 2

SENATE BILL 7: Makes certain opt-out provisions in contracts with consumers unenforceable under certain circumstances. (BDR 52-11)

SENATOR VALERIE WIENER (Clark County Senatorial District No. 3):

Senate Bill (S.B.) 7 was drafted to require opt-out provisions in contracts in which recurring charges are imposed on credit cards. It originated as S.B. No. 47 of the 72nd Session, which focused on large companies imposing small recurring charges on thousands of consumers. Senate Bill 7 was drafted to establish as a deceptive trade practice contracts authorizing vendors to make recurring charges without the express permission of the consumer. I have met with several people with specific concerns, and we will hear from some of them today.

CHRISTINA DUGAN (Las Vegas Chamber of Commerce):

We have no desire to protect businesses taking advantage of consumers. We feel some of the penalties in this bill, such as making the offense a deceptive trade practice and having the penalty be \$10,000, are too stringent. This is overly burdensome on a small business that simply makes a mistake in drawing up a contract.

SENATOR TOWNSEND:

Is section 5 a definition of the term "opt out"?

KEVIN POWERS (Committee Counsel):

"That's correct, Mr. Chairman. The definition is to describe the contractual relationship between the two parties, describing an opt-out contract."

Ms. DUGAN:

It is unclear if a recorded phone order would be considered a contract in this situation.

SENATOR TOWNSEND:

The vast majority of consumers who order an item over the phone receive a paper invoice with the item showing the credit card transaction. This is different from the opt-out provision, which can apply to a layaway or other recurring charges. Senator Wiener, is it your intention that all purchases of goods and services by a consumer have an opt-out provision?

SENATOR WIENER:

My intent was that it apply to recurring charges only, to give the consumer a chance to cancel the charge and ensure the consumer knows about and agrees to the ongoing charge at the onset. The bill was not intended to apply to one-time charges.

SENATOR TOWNSEND:

I am not certain the bill addresses the problem it was intended to correct.

WILLIAM R. UFFELMAN (Nevada Bankers Association):

The bill was intended to focus not on credit card companies but on vendors who put recurring charges on a consumer's bill without their knowledge or consent.

I recommend that services offered by the bank issuing the credit card be exempt from this bill. As the bill is written, the bank would have to initiate a new contract with a preexisting consumer every time such a service is purchased.

SENATOR HARDY:

I have had experiences in which a vendor with whom I have a preexisting business relationship offers a service that is "free for 90 days," without specifying that at the end of the 90 days the service will be automatically renewed and my account will be billed monthly. The problem may be handled best as a business practice, rather than attempting to regulate contracts.

SENATOR WIENER:

I am willing to consider exemptions for preexisting business relationships. I do not want to lose sight of the original problem of charges being added without the consumer's knowledge or consent. When the consumer challenges a recurring charge, the vendor should be required to produce evidence that the consumer agreed to the charge. If the vendor cannot produce such evidence, treble costs could be imposed.

SENATOR TOWNSEND:

We need to discern what provisions currently exist to help consumers in this situation. For that purpose, I recommend we meet with a representative from the Bureau of Consumer Protection (BCP). The BCP can also help us with federal jurisdiction issues with regard to oversight of banks. The practice being discussed has repercussions in the area of identity theft, in instances where

Subcommittee of the Senate Committee on Commerce and Labor
February 9, 2005
Page 4

charges are made to a consumer's credit card without his or her knowledge or consent.

CHAIR LEE:
Do Nevada banks sell customer lists?

MR. UFFELMAN:
Not to my knowledge.

CHAIR LEE:
I have concerns about enforcement of smaller claims. Also, I note that section 3 of the bill restricts it to purchases made "not for business or research purposes." Businesses should not be excluded from these protections.

CHRIS MACKENZIE (American Express):
Section 7, subsection 1, paragraph (c) of the bill requires the opt-out provision to be initialed by the consumer. Many purchases made by American Express customers are made by phone or the Internet, and it is difficult to obtain the consumer's initials in those circumstances.

PAUL J. ENOS (Retail Association of Nevada):
We have concerns about contract issues in the bill and with establishing this as a deceptive trade practice. We will work with Senator Wiener on this.

Subcommittee of the Senate Committee on Commerce and Labor
February 9, 2005
Page 5

CHAIR LEE:

We will not hear testimony on this bill until Senator Wiener informs us she is ready to discuss it again. If there is no further comment, this meeting is adjourned at 11:08 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator John Lee, Chair

DATE: _____